IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 69 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HASUMATI SHIVLAL KARIA

Versus

KRISHNAKUMAR SHIVLALBHAI KARIA

Appearance:

1. First Appeal No. 69 of 1989

MR RR TRIVEDI for Petitioner No. 1

MR PY DIVYESHVAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 04/02/2004

ORAL JUDGEMENT

1. This Appeal under section 278 of the Indian Succession Act has been preferred by the propounder of

the Will dated 10-12-1973, stated to have been executed by Shivlal Becharlal Karia, the testator.

2. It is the say of the applicant (present appellant) that, her husband deceased Shivlal Becharlal Karia who died on 13-12-1973 executed a Will on 10-12-1973 at Bombay and under the said Will the applicant (present appellant) is one of the legatees. The applicant propounding the said will filed application seeking grant of Letters of Administration on the basis of the Will dated 10-12-1973 stated to be the last Will of a free & capable testator deceased Shivlal Becharlal Karia. The lower court appreciating the evidence of the attesting witnesses dismissed the application for grant of Letters of Administration by the impugned judgment & order holding that the requirement of section 63-C have not been complied with in as much as none of the attesting witnesses deposed to the effect that deceased was seen by any of them putting his signature on the Will in question. The applicant propounder of the Will by this appeal has assailed the impugned judgment & order.

I have perused the record & proceeding of the application in the lower court and reappreciated the evidence.

3. It is not in dispute that the applicant happens to be the wife of Shivlal Becharlal Karia who died on 13-12-1973. According to the applicant, Shivlal Becharlal Karia during his life time executed the Will dated 10-12-1973 (Mark 28/1) and that this was, according to the applicant, the last Will of a free & capable testator.

In order to prove the Will dated 10-12-1973 being the last Will of a free and capable testator in a sound and disposing state of mind, the applicant examined attesting witness to the Will Liladhar Chapsinh Manek, whose evidence has been recorded in the trial court at Exhibit-64. It is suggested from the evidence of this attesting witness that he was shown original Will at Mark 28/1; that he cannot say whose signature it is just opposite the signature of the witness on the right hand side; that he cannot say who has signed at No.1 & 2, that he attested Mark 28/1 in 1973. It has been further deposed by him that Hasumatiben had come to call the witness saying that he is called by Shivlalbahi whereupon the witness went to the place of Shivlalbhai and he was found lying. The witness asked Shivlal as to what is the work, to which Shivlal did not answer. Hasumatiben told the witness that doctor had asked Shivlal not to speak

and so do not disturb him. Thereafter she gave one document to the witness and asked him to put his signature. The witness told Hasumatiben that the document is in English and he does not know English language, whereupon she said that she also does not know English. She further said that Shivlalbhai has put his signature below the signature of Ganeshbhai and Bhupatbhai. She further said that you are a neighbour and Shivlalbhai had also put his signature so the witness should put his signature; thereafter the witness put his signature; that Hasumatiben had told the witness that this document is a Will of Shivlalbhai.

The applicant has also examined another attesting witness Udyavar Ganesh Chinoy at Exhibit-66. It is suggested from his evidence that the witness put his signature on the document Mark 28/1 on the right hand side of the document. The witness also tried to talk with Shivlalbhai but Hasumatiben told him that doctor has asked Shivlalbhai to take rest.

The third attesting witness Bhupendra Lalchandbhai Shah (exh. 73) has also deposed in same lines suggesting that when he put his signature on the Will as attesting witness the Will was already signed by the testator.Thus it will be seen from the evidence of the attesting witnesses that it is not deposed by any of the attesting witnesses that the testator Shivlal Becharlal Karia had put his signature first and thereafter the witnesses attested the signature of the testator on Mark 28/1. Thus it is not deposed by any of the attesting witnesses that they saw the testator signing the Will Mark 28/1. On the contrary it is suggested that when the attesting witnesses were called to attest the signing of the testator at Mark 28/1, the testator was not in a position to speak and they were asked by the applicant not to disturb the testator as the doctor had advised the testator to take rest. The evidence of the attesting witnesses suggest that requirement of section 63-C is not satisfied.

4. Evidence on record also does not suggest that deceased Shivlal Bhecharlal Karia was in a sound and disposing state of mind so as understand what he was doing when he is said to have signed the Will Mark 28/1.

5. On re-appreciating the evidence on record, it is not suggested that the lower court has committed any error in dismissing the application holding that the requirement of section 63C has not been complied with, and that the applicant would not be entitled to the grant

of Letters of Administration on the basis of the Will Mark 28/1. I, do not find any infirmity or illegality in the impugned judgment & order so as to call for the interference with the same in the appeal, and the appeal being devoid of merit is liable to be dismissed.

6. In the result appeal is dismissed.

Dt: 4-2-2004 (N.G. Nandi, J)

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